

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:07-00058-001

KEITH LAMONT MONTGOMERY

**MEMORANDUM OPINION AND ORDER**

On May 4, 2016, Montgomery filed a "Motion for Re-Sentencing Based on Supreme Court Decision in Johnson and Welch, Motion to Appoint Counsel for Successive § 2255(f)." (ECF No. 71). Although Montgomery's motion was docketed in his criminal case, the Clerk failed to open a new civil action under 28 U.S.C. § 2255.\* Accordingly, the Clerk is hereby **DIRECTED** to open a new civil action docketing Montgomery's filing as a Motion to Vacate under 28 U.S.C. § 2255.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 20th day of September, 2017 nunc pro tunc to May 4, 2016.

ENTER:

  
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David A. Faber  
Senior United States District Judge

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\* The caption on Montgomery's motion included another civil action number, 2:14-16267. However, at the time Montgomery filed the instant motion, Magistrate Judge Eifert had already filed her Proposed Findings and Recommendation and Montgomery had filed his objections thereto in Civil Action No. 2:14-16267.